IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. APPLICATION NO. 724 OF 2003

IN

Cri. W.P. NO. 409/1995

Shri Mahendra C. Kariya .. Applicant.

V/s.

Shri Suresh Bafna & Ors. ..Respondents.

Shri S. V. Marwadi for the Applicant.
Shri S. P. Kadam, for Respondent No.1.
Shri K.V. Saste, APP for Respondent No.3- State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 18, 2005

PC :-

1. This application is filed by the heir and legal representative of Umesh Chagpal Karia, the original respondent No.2. The said respondent No.2 has died on 29th November, 2002. This application has been filed on 18th February, 2003. No reply has been filed, opposing this application. Shri S.P. Kadam appearing for respondent No.1 in this application, original petitioner, submits that there is no reason to entertain this application as the original complaint was filed by the respondent No.2 and after his death his heir and legal representative is not a necessary nor proper party to the present proceedings. In my opinion, death of the original respondent No.2

will make no difference to the prosecution which has been initiated at his instance, in the facts and circumstances of the present case. This is so because the trial court ordered inquiry on the basis of the complaint so filed by the respondent No.2, under section 156 (3) of the Code. That order is so far not set aside, coupled with the fact that the case has now been taken over by the police in view of the direction issued by the trial court. In that sense, it has now become a police case. In my opinion, the presence of the heir of the deceased, original respondent No. 2, though may not be necessary - but no prejudice will be caused to the Accused if the heir of the original complainant is permitted to assist the court in the present proceedings. Accordingly, the application is granted in terms of prayer clause (a).

2. As a consequence, the applicant is substituted as respondent No. 2 (A) in place of respondent No.2 in Criminal Writ Petition No. 409 of 1993. Consequential amendment be carried out in the course of the day.

3. Ordered accordingly.

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